

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

KOLEMAN R. FINKELSTEIN

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CIVIL ACTION

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NO. 22-1180

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VERSUS

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JUDGE

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THE OLD EVANGELINE DOWNS, L.L.C.

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NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, comes The Old Evangeline Downs, L.L.C., d/b/a Evangeline Downs Racetrack & Casino (“Evangeline Downs”), defendant in the action entitled “*Koleman R. Finkelstein v. The Old Evangeline Downs, L.L.C.*”, and bearing Civil Action No. C-2210413 (B) on the docket of the Twenty-seventh Judicial District Court for the Parish of St. Landry, State of Louisiana, to notice removal of that Louisiana state civil court action to the United States District Court for the Western District of Louisiana, and upon information and belief represents:

1.

The 27th Judicial District Court for the Parish of St. Landry, State of Louisiana, is located within the Western District of Louisiana pursuant to 28 U.S.C. §98. Therefore, venue is proper in this court in accordance with 28 U.S.C. §1441(a) because it is the “district and division embracing the place where such action is pending.”

2.

On 22 March 2022, plaintiff, Koleman R. Finkelstein, filed suit in the 27th Judicial District Court for the Parish of St. Landry, State of Louisiana, against Evangeline Downs.

3.

In plaintiff's Petition for Damages, he alleges that on or about 30 March 2021, plaintiff, a citizen and domiciliary of the State of Louisiana, was visiting Evangeline Downs, when he slipped and fell. Plaintiff claims unspecified injuries due to the incident. Pursuant to 28 U.S.C. §1446(a), a copy of the Petition for Damages is attached hereto as Exhibit "A".

4.

This Court has diversity jurisdiction over this case under the provisions of 28 U.S.C. §1332, because plaintiff is a citizen and domiciliary of the State of Louisiana, and the only defendant, Evangeline Downs, is diverse from plaintiff. Evangeline Downs is a Louisiana limited liability company with a single member, Peninsula Gaming, LLC, which is also a Louisiana limited liability company. Peninsula Gaming's sole member is Boyd Acquisition II, LLC, a Louisiana limited liability company, which in turn is owned by a single member, Boyd Acquisition I, LLC, which is also a Louisiana limited liability company. The sole member of Boyd Acquisition I, LLC is Boyd Acquisition LLC, a Louisiana entity. The sole member of Boyd Acquisition LLC is Boyd Gaming Corporation, a Nevada corporation with its principal place of business in Nevada. Thus, Evangeline Downs is a citizen of Nevada.

6.

There is complete diversity of citizenship between plaintiff, a citizen of Louisiana, and defendant, a citizen of Nevada.

7.

In paragraph 11 of the Petition for Damages, plaintiff alleged that he suffered "substantial bodily injury," specifically including new injuries and aggravation of preexisting injuries, along with mental, emotional, and psychological injuries. In Paragraph 12 of the Petition for Damages,

plaintiff alleged unspecified damages, including past, present, and future medical expenses, pain and suffering, lost wages; emotional stress and strain; loss of “life’s pleasures”; and reduced earning capacity. Notably, plaintiff is a medical doctor.

8.

Plaintiff did not include a general allegation in his Petition for Damages that his claim is less than the requisite amount required to establish that the federal courts lack jurisdiction due to insufficiency of damages, as required by La. Code Civ. Proc. art. 893(A)(1). Consequently, the amount in controversy is not apparent from the face of the lawsuit.

9.

However, prior to suit, plaintiff produced medical records to defendant and advised that he had sustained a serious eye injury, a nose laceration, and a torn left rotator cuff in the fall. In addition, he advised that he underwent a three-level micro-decompression of the lumbar spine, which surgery he also relates to the fall. Finally, he alleged his medical expenses related to the fall totaled \$34,875.00, as of 2 March 2022.

10.

Given the extent of the alleged injuries suffered, based on plaintiff’s allegations in the Petition for Damages, his claim for lost wages, his medical expenses, and the medical records received by undersigned counsel, the amount in controversy of plaintiff’s claim exceeds the sum of \$75,000, exclusive of interest and costs.

11.

Pursuant to the provisions of 28 U.S.C. §§1441 and 1446, this action is one that may be removed to the United States District Court for the Western District of Louisiana.

12.

Plaintiff's state court action was filed on 22 March 2022. Defendant Evangeline Downs was served on 11 April 2022. Accordingly, this removal is timely under 28 U.S.C. §1446(b).

13.

Therefore, this is a civil action over which the United States District Court for the Western District of Louisiana has concurrent jurisdiction under the provisions of 28 U.S.C. §1332, as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity exists between all adverse parties. As such, removal is proper.

14.

Pursuant to 28 U.S.C. §1446(d), written notice of filing of this Notice of Removal is being delivered to the plaintiff through his counsel of record, and a copy of this Notice of Removal will be filed with the clerk of the 27th Judicial District Court for the Parish of St. Landry.

15.

No previous application has been made for the relief requested herein.

WHEREFORE, premises considered, Defendant, The Old Evangeline Downs, L.L.C., d/b/a Evangeline Downs Racetrack & Casino, notices removal of the above-described state court action to this Honorable Court and prays for all general and equitable relief to which it is entitled.

Respectfully submitted,

MURPHY, ROGERS, SLOSS,
GAMBEL & TOMPKINS

/s/ John H. Musser, V

John H. Musser, V, T.A. (#22545)

jmusser@mrsnola.com

Tarryn E. Walsh (#36072)

twalsh@mrsnola.com

Brittney I. Esie (#39174)

besie@mrsnola.com

701 Poydras Street, Suite 400

New Orleans, Louisiana 70139

Telephone: (504) 523-0400

Facsimile: (504) 523-5574

Attorneys for Defendant, The Old

Evangeline Downs, L.L.C., d/b/a

Evangeline Downs Racetrack & Casino

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 3 May 2022, a copy of the foregoing pleading was sent to all counsel of record, either by operation of the Court's CM/ECF system, by hand, by email, by telefax or by placing same in the United States mail, properly addressed, and first class postage prepaid.

/s/ John H. Musser, V